

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 254 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

DR. MRS. MANJU V PATEL

Versus

DIRECTOR OF MEDICAL SERVICES

Appearance:

MR MANEVALAN with MR S.V. RAJU, Advocates for the
appellant.

MS. MANISHA LAVKUMAR, Assistant Government Pleader for
the respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/09/2000

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant challenges the judgement and order dated 19th April, 1988 of the learned Single Judge, rejecting her petition, in which the appellant had prayed for a direction on the respondent authority to permit her to work as Insurance Medical Officer, Class-II and to treat her to be in service without any break from 24.2.1978 with all consequential benefits, including backwages.

2. The appellant was appointed as a Medical Officer Class-II in the Gujarat Medical Services Class-II, in the Employees' State Insurance Scheme, by an order dated 23.2.1978 at Annexure "A" to the petition. According to her, when she was serving in Dispensary No. D-20 at Bapunagar, for personal reasons she did not want to continue in service and she therefore, submitted her resignation dated 7.5.1986 at Annexure "B" to the petition. According to her, she was desirous of leaving the job and starting private practice. The case of the appellant is that her resignation was not accepted and she was compelled to sit idle not performing any duty as a result of non-acceptance of her resignation. The appellant therefore, wrote a letter dated 17th September, 1987, a copy of which is at Annexure "C" to the petition, stating that since her resignation was not accepted, she was withdrawing the same. The appellant showed her willingness to resume duty at the same place where she was working at the time of tendering her resignation.

3. The learned Single Judge held that this was not a case of prospective resignation and the relationship of the employer and employee came to an end the day on which the resignation was submitted. It was held that had it not been so, the petitioner would have been asked by the respondent authority to attend to duties and the petitioner would have on her part, continued to work. It was held that the resignation was not conditional and did not depend upon happening of a particular event. It was also held that the petitioner had tendered the amount of notice pay for a period of one month and simply because there was no express letter communicating the acceptance of her resignation, it cannot be said that she continued to be in service. It was also held that the conduct of both the sides after the date of the submission of the resignation clearly indicated that the relationship of employer and employee had come to an end.

4. The learned Counsel appearing for the appellant contended that the resignation which was tendered by the appellant was not in consonance with Rule 33A of the

Bombay Civil Services Rules and that it was not a resignation in the eye of law because it was not addressed to the appointing authority. According to the learned Counsel, the State Government was the appointing authority and not the Director of Medical Services and therefore, such a resignation could have no consequences or effect and it was non-est. Reliance was placed on a decision of this Court in Hukumat Rai Vs. State, reported in 23(1) G.L.R 641, which was a case where resignation was submitted giving one month's notice to the Director of Health, but not to the Government, which was the appointing authority and emoluments for one month were not fully paid up. It was held that as the resignation was withdrawn before it was actually received by the appointing authority, it could not become effective. In Hukumat Rai's case it was found that the appointing authority had not received the letter of resignation till 28.1.1977 before which the petitioner had changed his mind and by his letter dated 18.1.1977 withdrawn the resignation.

4.1 In the present case, neither in the petition, nor before the learned Single Judge any contention was taken up that the resignation was addressed to a person who was not an appointing authority or that the resignation which was given in writing was not placed before the appointing authority. It appears from the order of appointment that though there is some reference to the Government orders, the appellant was being appointed by the said order at Annexure "A" to the petition, which was admittedly issued by the Director i.e. the respondent. Since no such contention was raised before the learned Single Judge, the impugned order of the learned Single Judge cannot be assailed on the ground that the contention not raised was not considered. Moreover, the contention was not apparent from any papers on record and no ground was raised in connection with the question of resignation being not addressed to the appointing authority. It appears that the ground is taken only during the course of arguments of this appeal, in view of the decision of the learned Single Judge in Hukumat Rai (supra). Even in the letter of withdrawal of resignation addressed by the appellant on 17th Sept. 1987, no such ground was raised and undisputedly that letter was also addressed to the same authority to whom the letter of resignation was sent. It therefore would appear that the ground now sought to be urged at the time of hearing of the appeal is an after-thought.

4.2 In this connection, we may refer to the decision of the Hon'ble Supreme Court in State of Uttar Pradesh

Vs. Ved Prakash Sharma, reported in 1995 Supp (2) SCC 582, on which reliance was placed by the learned Counsel appearing for the respondent. In that case, there was a stipulation that services could be terminated on one month's notice on either side and after more than 4 years of sending a notice terminating the contract, the employee sent a letter stating that he desired to withdraw the letter of resignation. The High Court issued a direction on the State of Uttar Pradesh to take him back in service, quashing the communication informing him that since he had resigned the relationship of employer and employee had come to an end and nothing further could be done. The Supreme Court held that such an order cannot be allowed to stand since the respondent was entitled as of right to terminate the contract by one month's notice, which he had done and therefore, on the expiry of period of one month, the relationship of employer - employee came to an end. It was held that the fact that he continued for some time after the expiry of the period made no difference.

4.3 In the present case also the appellant by tendering her resignation had put an end to the contract. The subsequent conduct clearly indicated that by virtue of her resignation, she had treated the relationship of employer and employee having come to an end. Under Rule 33A(2) of the Bombay Civil Service Rules, even if the resignation is not expressly accepted, it shall be deemed to have become effective on the date of the expiry of the notice period. It was argued that in the present case, instead of giving notice for one month, the appellant had given notice pay. In the resignation letter at Annexure "B" to the petition, the appellant had stated that she was appointed by the Director and that as per the Rules, she was giving notice pay for one month. If notice pay in lieu of one month's notice was not permissible, it was the concerned authority who could have raised an objection against the resignation but equally it was open for the concerned authority not to insist on that requirement and waive the requirement and treat the resignation as effective, as it was done in the instant case. The appellant had, after resigning, abstained from attending her duties, treating her resignation to be valid and it was not open for her after a lapse of over a period of one year and four months to resile from her resignation, which was deemed to have been accepted. There is therefore no valid reason for interfering with the impugned decision of the learned Single Judge and the appeal is dismissed with no order as to costs.

5. The learned Counsel appearing for the appellant

submits that the appellant will make a representation to the State Government for a sympathetic consideration of the matter, on the strength of the decision of this Court in Hukumat Rai (*supra*). If any such representation is made, it will be entirely for the concerned authority to consider the same and take its own decision in accordance with law, for which we can have no say.

* /Mohandas